



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

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November 24, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF AN ORDINANCE TO AMEND THE ELECTRICAL
FRANCHISE GRANTED TO SOUTHERN CALIFORNIA EDISON COMPANY
BY ORDINANCE NO. 7062, AS AMENDED, AND APPROVAL OF AN
AGREEMENT FOR ABATEMENT OF GRAFFITI
(ALL AFFECTED) (3 VOTES)**

SUBJECT

Approval of these recommendations will amend the electrical transmission and distribution franchise granted to Southern California Edison Company to extend the term of the franchise through December 31, 2011, update the terms and conditions of the franchise for payment of annual franchise fees and surcharges, and approve a supplemental agreement for abatement of graffiti.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve an ordinance to amend the electrical transmission and distribution franchise granted to Southern California Edison Company, a California corporation (Edison), by Ordinance No. 7062, as amended, to extend the term of the franchise through December 31, 2011, and update the terms and conditions for the payment of annual fees and surcharges allowed pursuant to California Public Utilities Code.
2. Introduce, waive reading, and place on your Board's agenda for adoption the accompanying ordinance that implements the above recommendations, becoming effective January 1, 2010 (Exhibit A).

"To Enrich Lives Through Effective And Caring Service"

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3. Approve and instruct the Chairman of your Board to execute the accompanying "Graffiti Abatement and Coordination Agreement" (Graffiti Agreement) that implements a cooperative program with Edison for the removal of graffiti from Edison's above-ground facilities (Exhibit B).
4. Find that this project is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Class 1 of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15301 of the State CEQA Guidelines.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to adopt an ordinance to extend the term of the Edison franchise, in order to provide additional time to negotiate a settlement of the findings of an audit of the annual franchise fees and surcharges Edison paid to the County for calendar years 2001 through 2005; implement revisions to the County's franchise codes; negotiate the terms and conditions of a new long-term franchise with Edison; and implement the Graffiti Agreement for the abatement of graffiti.

Implementation of Strategic Plan Goals

The County Strategic Plan directs that we maximize and support timely delivery of efficient public services (Goal 1), and provide access to delivery of customer-oriented municipal services (Goal 3). Your Board's adoption of an ordinance to amend the Edison franchise and approval of the Edison Graffiti Agreement is consistent with these goals.

FISCAL IMPACT/FINANCING

Edison has paid the County a one-time granting fee of \$5,000 to process an ordinance to amend the franchise. Under the amended franchise agreement, Edison will continue to pay an annual franchise fee, which for the 2008 calendar year was \$3.28 million dollars based upon two percent of Edison's gross annual receipts arising from the use, operation or possession of the franchise, calculated pursuant to Division 3, Chapter 1, of the California Public Utilities Code (CPUC), popularly known as the "Broughton Act."

Edison will also continue to pay a "municipal public lands use surcharge," which for the 2008 calendar year was \$276,022, based upon two percent of the gross annual receipts from Edison's direct-access customers that have opted to have Edison transport their electricity purchased from a third party, calculated pursuant to Division 3, Chapter 2.5 of the CPUC. Accordingly, Edison paid a total annual franchise fee and surcharge of \$3.55 million dollars for the 2008 calendar year.

The terms and conditions in the amended franchise also state that the annual franchise fee calculated under the Broughton Act can never be less than a minimum payment of one percent of the gross annual receipts from Edison's sales of the commodity (electricity) or service within the franchise area, calculated pursuant to Division 3, Chapter 2 of the CPUC, popularly known as the "Franchise Act of 1937" (the 1937 Act).

The annual franchise fee that Edison will pay to the County for the 2010 calendar year will be the higher of the two calculations performed pursuant to the Broughton Act and the 1937 Act.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On November 27, 1956, your Board adopted Ordinance No. 7062, granting a 50-year County-wide electrical franchise to Edison, which expired December 27, 2006. By adopting Ordinance No. 2008-0060F, your Board extended the term of the Edison franchise through December 31, 2009. Upon your Board's adoption of the accompanying ordinance, the term of the Edison franchise will be extended to December 31, 2011, and the terms and conditions in the franchise for the payment of an annual franchise fee and surcharge to the County will be updated to reflect the above calculations allowed by the CPUC.

In addition to the amendments to the franchise, Edison has agreed to an interim solution to address your Board's concerns regarding timely removal of graffiti from Edison's above-ground facilities maintained within the franchise area at Edison's expense. Upon approval by your Board, the Graffiti Agreement will implement a cooperative program for the removal of graffiti from Edison's above-ground facilities within 48-hours of notification.

The Graffiti Agreement provides for a coordinated effort between the Department of Public Works (DPW) and Edison's graffiti abatement contractor, in order to synchronize graffiti removal requests from DPW's "Graffiti Abatement Referral System," and engage Edison's contractor in more proactive patrolling to remove graffiti within the County's "zero tolerance zones." Once approved by your Board, the Edison Graffiti Agreement will assist DPW in removing graffiti.

The Department of Public Works and Fire Department have reviewed this request and have no objections. County Counsel has reviewed the graffiti agreement and the accompanying ordinance to extend the franchise and approved it as to form.

ENVIRONMENTAL DOCUMENTATION

This project is categorically exempt under CEQA pursuant to Class 1 of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15301 of the State CEQA Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board actions will not impact or adversely affect any current services or future projects.

CONCLUSION

Instruct the Executive Officer, Board of Supervisors, to send conformed copies of the adopted Board recommendation, ordinance, and Graffiti Agreement to: Mr. Wes Tanaka, Director of Local Public Affairs, Southern California Edison Company, 2244 Walnut Grove Avenue, Room 372, Rosemead, CA 91770, and the offices of County Counsel, Department of Public Works, Fire Department, Sheriff's Department, and the Chief Executive Office, Real Estate Division.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SK:WLD
CM:RB:kb

c: Executive Office, Board of Supervisors
County Counsel
Auditor-Controller
Department of Public Works
Fire Department
Sheriff's Department

EXHIBIT B

GRAFFITI ABATEMENT AND COORDINATION AGREEMENT

GRAFFITI ABATEMENT AND COORDINATION AGREEMENT

This Graffiti Abatement and Coordination Agreement ("Agreement") is made and entered into by and between Southern California Edison Company, a California Corporation ("SCE"), and the County of Los Angeles ("County").

RECITALS

WHEREAS, the County is a duly organized subdivision of the State of California;

WHEREAS, the County in pertinent part provides law enforcement services to the unincorporated portions of the County of Los Angeles;

WHEREAS, SCE is a regulated public utility operating under the laws of the State of California;

WHEREAS, over the course of time, the County has attempted to control and remediate the problems associated with graffiti in the public rights-of-way and elsewhere;

WHEREAS, the County has entered into several contracts with other vendors to provide graffiti abatement services;

WHEREAS, due to safety and identification concerns, SCE does not consent to abatement by the County except as provided herein;

WHEREAS, SCE's electric facilities installed in the public right-of-way are particularly vulnerable to graffiti;

WHEREAS, SCE has entered into a contract with a vendor ("Graffiti Abatement Vendor" or "Vendor") to provide graffiti-abatement services on SCE's Facilities across SCE's 50,000-square-mile service territory, including the unincorporated areas of the

County, the term of which runs through December 31, 2011, which contract requires graffiti abatement within 48 hours of notice, on a Monday-Friday (holidays excepted) basis;

WHEREAS, SCE's Vendor responds to notice of graffiti on SCE facilities regardless of the source of that notice, and SCE has provided County with the toll-free number and the email address of the Vendor's dispatch center;

WHEREAS, due to the unique nature of SCE's Facilities, SCE and the County recognize that SCE and its contractors are best positioned to safely abate graffiti from SCE's Facilities, except as otherwise provided herein;

WHEREAS, SCE and the County believe that a period of proactive patrolling and abatement in areas deemed particularly subject to graffiti may in fact reduce both parties' costs of graffiti abatement;

WHEREAS, SCE and the County wish to memorialize an agreement which recognizes SCE's graffiti abatement program and establishes protocols by which SCE and the County can ensure that graffiti is abated expeditiously on a consistent basis.

NOW THEREFORE, the parties agree as follows:

Section 1.0 Supersedence to Los Angeles County Code Title 13, Division 1, Chapter 13.12. The parties hereto acknowledge and agree that to the extent the terms and conditions contained herein conflict with or exceed the requirements of those contained in Los Angeles County Code, Title 13, Division 1, Chapter 13.12, the terms and conditions contained herein shall govern.

Section 2.0 Efficient Coordination with County Efforts. Within thirty (30) days following execution of this Agreement, SCE, its Vendor, and County staff shall meet and confer for the purpose of developing a notice protocol by and between the County and SCE. The purpose of the notice protocol is to establish that the County will notify SCE of the existence of graffiti on SCE's facilities located in County rights-of-way via the County's Graffiti Abatement Referral System and set forth how SCE will provide notice to the County of the abatement of said graffiti. The protocol will also provide for additional information sharing as may reasonably be required between SCE and County for the purpose of catching and penalizing the culprits through graffiti tracking database systems (e.g., photographing graffiti and adding such graffiti to the County's graffiti database). In addition, SCE agrees to meet with County staff upon request as may be necessary to implement and as may be required to modify the notice protocol set forth in this Section.

Section 3.0 Rapid Response Protocol. SCE's Vendor shall accept reports of graffiti from the County through the County's Graffiti Abatement Referral System, and shall abate such graffiti to County standards on SCE-owned structures and structures jointly owned by SCE and other persons and entities located in the public right-of-way within forty-eight (48) hours (Monday through Friday, holidays excepted) of receiving notice of said graffiti in accordance with the notice protocol to be developed pursuant to Section 2.0 above. To the extent SCE's Vendor cannot abate the subject graffiti within the time allotted herein, SCE may request an extension from the County of not to exceed five (5) days where due to unique or unforeseen circumstances (e.g., inclement

weather), SCE's Vendor cannot complete the abatement in the time allotted. In such case, the County shall approve the extension if, in the County's reasonable opinion, the justification for the extension would prevent the subject abatement within timeframe allotted. If no extension is granted by the County, the County shall proceed to remove the graffiti at SCE's sole expense which shall be the County's actual cost of the subject abatement, including the County's administrative costs for addressing the subject violation. Such action, however, does not and shall not create an employment or contractor relationship as between the County and SCE's Vendor, and shall not constitute the giving of direction by the County to SCE's Vendor. SCE shall have no responsibility to abate graffiti on structures owned by others. However, should the quality of work not meet County standards, SCE shall correct such deficiencies within forty-eight (48) hours' notice by County via electronic mail directly to SCE's Vendor. Should SCE fail to do so, County shall correct such deficiencies at SCE's sole expense which shall be the County's actual cost of the subject abatement, including the County's administrative costs for addressing the subject violation. The precise form of calculation of the County's actual cost shall be negotiated as part of the Notice Protocol set forth above. For the purpose of this Agreement, abating to "County standards" means painting over the subject graffiti with paint that reasonably matches the subject equipment or structure.

Section 4.0 Training and Information Sharing. To avoid the duplication of efforts, SCE will, upon request, provide at SCE's own cost, reasonable training to County supervisory and monitoring personnel and, upon request and as agreed, to

County contractors as well, in the differentiation between SCE-owned facilities and those owned by others. Such training may include, but may not be limited to, developing and delivering to the County for distribution to its own staff and contractors laminated cards with photographs, pictograms or other representations of the types of facilities SCE has installed in the public right-of-way in the County, along with similar renderings or photographs of the tags that identify SCE facilities, and the toll-free telephone number for SCE's graffiti-abatement contractor.

Section 5.0 Coordination With Law Enforcement. Upon request, SCE agrees to provide County staff with a schedule of its Vendor's graffiti abatement in the unincorporated areas of the County, especially those in the areas addressed in Section 6.0 below.

Section 6.0 Proactive Patrolling and Abatement of Zero Tolerance Zones. County staff shall designate throughout the term of this Agreement certain high-priority Zero Tolerance Zones ("ZTZ") in which SCE shall establish and/or increase its routine maintenance to include periodic proactive actions directed to SCE-owned structures in the public right-of-way in such areas. SCE agrees to cause its Vendor to assign one (1) graffiti abatement crew ("Proactive Crew") for the purpose of increasing SCE's proactive patrolling and abatement. SCE shall cause its Vendor to cause the Proactive Crew to negotiate a reasonable coordination schedule with the County. Such schedule may include the Vendor's calling of the County's designee at the beginning of the Vendor's work day or work week for the purpose of assigning an initial ZTZ or ZTZs for patrol by the Proactive Crew for that day or week. To the extent that the Proactive Crew

completes its patrol and abatement before the end of its regular day, or week (as may be applicable), the Proactive Crew shall contact the County's designee who may assign another ZTZ for patrol, provided that such alternative ZTZ is within a reasonable distance of the initial ZTZ given that day or week. This process shall be repeated throughout the day or week as the Proactive Patrol may complete its work in each ZTZ. To the extent the Proactive Patrol is unable to complete its patrol and abatement within a ZTZ during the scheduled time period (e.g., day or week), it shall report same to the County's designee at the end of the subject day or week, whereby the Proactive Patrol will provide the County's designee with a timetable in which it reasonably believes it could complete its work in that ZTZ. Alternatively, upon agreement of the parties, the County and SCE may agree to adjust the coordination schedule (e.g., daily, weekly, or monthly reporting in) depending on the success of the program. This Section shall not be construed as reducing the amount of time allotted to SCE to abate graffiti as set forth in Section 3.0 above. In addition, this Section shall not prohibit the Proactive Patrol from addressing notices of graffiti abatement set forth in Section 3.0 within the assigned ZTZ patrolled for that day or week or within a reasonable radius of the subject ZTZ. For the purpose of this Agreement, a "reasonable radius" shall be negotiated as part of the Notice Protocol discussions set forth in Section 3.0.

Section 7.0 Work-Safety. Neither SCE nor its contractor shall have any obligation to abate graffiti in the event of actual threats to the safety of such personnel. In the event of any such threats, SCE shall promptly notify the County of same. Following notification, the County and SCE shall meet and confer either telephonically,

electronically (email) or in person immediately to discuss a safe manner in which the graffiti could be removed within an appropriate extension period to be approved by the County, as described hereinabove. In the event that a reasonably safe manner for removal cannot be identified at such meeting, then SCE shall allow County access to abate the graffiti at SCE's sole expense which shall be the actual cost of the County to abate the subject graffiti, including the County's administrative costs for addressing the subject violation. SCE and the County shall also confer promptly to establish additional procedures and measures, including coordination with law enforcement, to make possible the safe resumption of graffiti abatement in such areas in the future.

Section 8.0 CEQA Compliance. This Agreement does not establish or create a "project" within the meaning of the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA.

MISCELLANEOUS

Section 9.0 Entire Agreement. This Agreement expresses the entire agreement of the parties on the subject hereof. This Agreement may only be modified by a writing executed by both parties.

Section 10.0. No Third Party Beneficiaries. The County is not and shall not by virtue of this agreement become a third-party beneficiary of SCE's contract with its own Graffiti Abatement Vendor.

Section 11.0 Substitution of Vendor. In the event SCE selects a different vendor to provide graffiti abatement services, it shall notify the County of such change within 48 hours of the effective date of that change.

Section 12.0 Term of Agreement. This Agreement shall remain in effect for two years from the date it is approved by the County and SCE, or until earlier terminated by the mutual written consent of SCE and the County.

Section 13.0 Governing Law/Venue. This Agreement shall be interpreted under the laws of California. Venue shall be appropriate in Los Angeles County.

Section 14.0 County's Remedies. Should SCE fail to fully perform any of its obligations hereunder, the County may, but shall not be obligated to, perform any or all of said unfulfilled obligations as set forth in Section 3.0 above. Further, SCE shall defend, hold harmless, and indemnify County for any and all personal injury, wrongful death, property damage, and other damages arising therefrom unless such cause of action is due to the sole negligence or willful misconduct of the County, its employees, or contractors.

Section 15.0 Counterparts. This Agreement may be executed in counterparts.

[END OF TERMS]

The foregoing Agreement was on the ____ day of _____, 20____, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts.

COUNTY OF LOS ANGELES

By _____
Don Knabe, Chairman

ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk
Of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Grace V. Chang
Senior Deputy County Counsel

IN WITNESS WHEREOF, Southern California Edison Company has caused this Agreement to be executed on its behalf, effective on the day, month and year first written above.

**SOUTHERN CALIFORNIA EDISON
COMPANY**, a California corporation

By: _____

Print Name

Title